(25,140)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 103.

JOSEPHUS WELLS, APPELLANT,

vs.

DANIEL C. ROPER, FIRST ASSISTANT POSTMASTER GENERAL OF THE UNITED STATES.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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1 Court of Appeals of the District of Columbia.

No. 2820.

JOSEPHUS WELLS, Appellant,

vs.

DANIEL C. ROPER, &c.

Supreme Court of the District of Columbia.

In Equity. No. 33195.

JOSEPHUS WELLS, Plaintiff,

vs.

DANIEL C. ROPER, First Assistant Postmaster General of the United States, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

Bill.

Filed January 27, 1915.

In the Supreme Court of the District of Columbia.

In Equity. No. 33195.

JOSEPHUS WELLS, Plaintiff,

vs.

DANIEL C. ROPER, First Assistant Postmaster General of the United States, Defendant.

Plaintiff states as follows:

1. The plaintiff, Josephus Wells, is a citizen of the United States and a resident of the District of Columbia and brings this suit in his own right.

2 2. The defendant, Daniel C. Roper, is a citizen of the United States and a resident of the District of Columbia; is

First Assistant Postmaster General of the United States and is sued as such.

3. On or about the 14th day of February A. D. 1913, the plaintiff and the United States of America entered into a contract in writing and print duly executed and signed by both said parties, a copy of which is hereto attached, marked Ex. "A", and made a part hereof the same as if literally copied herein.

4. On or about the said 14th day of February A. D. 1913 both the said parties entered upon the performance of said contract according to its terms. The plaintiff has at all times complied with every duty and obligation and with all the duties and obligations on his part to be performed under said contract and with every demand or requirement requested of him by the United States of America under said contract.

5. The United States of America has at all times as the same became due under said contract fully paid the plaintiff, according to the terms of said contract, for the equipment and services rendered by the plaintiff under said contract.

6. The plaintiff has never been guilty of any failures or delinquencies under said contract; the plaintiff has never violated the postal laws or the postal regulations.

7. It is not now, and never has been claimed or pretended by the United States of America or by any person or officer whatsoever that the plaintiff, or any one in -is behalf, has at any time or in any respect failed in the performance of any of his duties or obligations under said contract.

It is not now, and never has been claimed or pretended by the United States of America or by any person or officer whatsoever that the plaintiff, or any one in his behalf, has been guilty of any delinquency in the performance of any obligation or stipulation of said contract.

It is not now, and never has been claimed or pretended by the United States of America or by any person or officer whatsoever that the plaintiff, or any one in his behalf, has violated the postal laws or the postal regulations.

It is not now, and never has been claimed or pretended by the defendant that the plaintiff, or any one in his behalf, has been guilty of failures or delinquencies, or that plaintiff, or any one in his behalf, has violated the postal laws or postal regulations. Equipments and service as specified and described in said contract are still necessary to and required by the Post Office Department at Washington, D. C. and will be necessary to and required by the said Department at said place all the time up to and including the 14th day of February 1917. The form and phraseology of said contract was prepared by the United States of America.

8. The plaintiff is ready, able, willing and anxious to carry out and complete the said contract and every duty and obligation and stipulation thereto on his part to be performed, according to the terms of the said contract.

9. The defendant has no power, right or authority, either
3 as First Assistant Postmaster-General or in any other capacity to cancel said contract or any part thereof. Yet the de-

fendant has threatened to and will, unless restrained by the Court, unlawfully, willfully and wrongfully interfere between the plaintiff and the United States of America in the carrying on and execution of said contract; in order, as he, the defendant, says "to conduct in Washington, D. C., an experimental combined screen wagon and City collection and delivery service".

In pursuance of his unlawful plan and purpose as aforesaid to deprive the plaintiff of his benefit of the said contract, the defendant has, unlawfully and without any power or authority, undertaken to order that said contract be cancelled in a letter directed to the plaintiff, a copy of which is hereto attached, marked Ex. "B." and made a part hereof the same as if literally copied herein.

At the taking effect of the contract, the plaintiff was required by the United States of America to purchase five (5) new automobiles and their equipment for use under said contract, and he did at that time purchase five (5) new automobiles at a cash cost to him of $9,250. In order to carry out said contract to the satisfaction of the United States of America, the plaintiff was at the same time required, and he did, construct and equip a garage and repair shop in which to house, repair and keep in first class condition the said five (5) automobiles. The cash cost to the plaintiff of constructing a building into a garage with the necessary fire proofing and sewerage required by the regulations of the District of Columbia was $2,535; the necessary cash cost to the plaintiff for equipping the garage and machine shop, including electric wiring, electric motor, lathe, tools, air pump, shafting and pulleys, emery wheel, forge, oil tank, fire extinguishers, and electric light contract, was $1,120; in addition to which and necessary to the performance of said contract by the plaintiff he has paid out in cash for fire insurance premiums, liability insurance premiums, bond to the Government, for gasoline, lubricating oil, salaries, repainting and revarnishing said five (5) automobiles, $12,799; the reasonable rental value for his garage building for the two year- last past devoted to said contract is $1,200; the reasonable value for his own time and services for the two years last past devoted to the execution of said contracts is $4,000.

In order to enable himself to acquire the equipment necessary for the execution of said contract, the plaintiff borrowed the sum of $11,000 in money; devoting all of it to that purpose and has paid interest, in addition to the expenditures above named, at the rate of 6% per annum on his said loan, a large amount of which is still owing and unpaid and will become due in February 1915; his only means of payment must be derived from and are through the contract with the United States of America aforesaid; that he is a young man, who has succeeded in establishing a small grocery store and grocery trade in which he has made a modest living for himself and his family. If this said contract with the United States of America is interfered with by the defendant and he, the plaintiff, and the
4 United States of America prevented from carrying it out and he, the plaintiff, deprived of its advantages, or its performance even temporarily interfered with he will be rendered insolvent, his

credit will be destroyed, his business will be wholely broken up and his prospects in life blasted.

The aforesaid building, which he constructed into, and equipped as, a garage only for the purpose of executing said contract, is first class for that purpose but utterly unfit for any other purpose; it is situated in the South East section of Washington City in a locality where there is no use for and no demand for automobile garages; and if plaintiff is deprived of said contract, said building will be useless and unrentable in its present condition and will have to be again remodeled in order to be of any use or of any rental value. Each of the said five (5) automobiles is built and equipped according to the specifications set out in said contract; each is in first class condition and worth for the completion of said contract substantially its original cost; but because of the peculiar construction and equipment required by the contract, they are of no practical value except for handling the mails and for the execution of said contract; and unless plaintiff is permitted to execute said contract, said automobiles and each one of them will be useless to him and will be practically unsaleable and of a trifling and insignificant market value, solely because equipped for said contract, while they and each one of them is worth its original cost for the execution of said contract.

The defendant proposes to, has threatened to, and will upon the first day of February 1915, unless restrained and enjoined by the Court, announce and promulgate publicly and throughout the Post Office Department of the United States that the said contract is annulled and will, unless restrained and enjoined by the Court, by the unlawful and wrongful exercise of his office as First Assistant Postmaster-General of the United States, obstruct and prevent the plaintiff and the United States of America from the further execution of said contract on the part of either of the parties thereto; will prevent the plaintiff from receiving his compensation under said contract, which now amounts to $1,034.00 per month, and the result of the said abuse of the powers of his office by the defendant will be to deprive the plaintiff in the future of all of the advantages and compensations of said contract.

If the plaintiff and the United States of America are permitted to execute said contract according to its terms, the plaintiff will be able to repay to his creditors the money which, as above stated, he borrowed in order to pay for and acquire the automobiles and garage necessary for the execution of said contract. The said contract and the compensations thereunder have been and are the plaintiff's only resource for meeting the aforesaid obligations; plaintiff states that he has no adequate remedy at law.

In order to show why he has not sooner made this application to the Court, the plaintiff states that after the receipt of the letter hereto attached and marked Ex. "B", he protested, through his Counsel, to the defendant against the annulment of said contract; was advised by the defendant that the matter would be reconsidered and was referred by the defendant to the Purchasing Agent of the Post Office Department; that said Purchasing Agent consid-
5 ered the matter with plaintiff's Counsel and requested him to confer with the Solicitor of said Department, which was

promptly done; said Solicitor directed plaintiff's Counsel to lay the matter before a so-called "Automobile Committee" of the said Department, which was promptly done; the defendant directed the plaintiff's Counsel to confer again with him, the defendant, after addressing said Automobile Committee, which was promptly done; on the 19th day of January A. D. 1915, the defendant requested plaintiff's Counsel to supply him, the defendant, with a brief written statement of the reasons for plaintiff's said protest, which had been advanced before said Purchasing Agent, Solicitor of the Department, and Automobile Committee; said written statement was delivered to the defendant on the 20th day of January 1915, and the plaintiff, through his Counsel, was then advised by the defendant that he, the defendant, would give the question of annulment reconsideration and notify the plaintiff of the result thereof, in consideration whereof the plaintiff, through his Counsel, at the time agreed with the defendant that he would withhold this action until advised by the defendant of the result of the reconsideration aforesaid.

Upon January 27th, 1915, and not before, Defendant notified Plaintiff that he, the Defendant, intended to and would cancel said contract nevertheless.

Wherefore plaintiff prays that a temporary restraining order and temporary injunction issue restraining the defendant, his agents, servants, and subordinates from annulling or attempting to annul the said contract and from interfering or attempting to interfere between the plaintiff and the United States of America in the proper and lawful performance and execution of said contract by the plaintiff according to its terms, until this cause is finally determined; and that on final hearing said injunction may be made perpetual. The plaintiff prays that a rule issue forthwith, requiring the defendant to show cause on or before the — day of January 1915 at 10 o'clock A. M. why the prayers in this bill should not be granted; plaintiff asks that this bill be taken as well as an affidavit upon his application for the injunction aforesaid and prays for all other relief which in the nature of the case is proper and necessary.

JOSEPHUS WELLS.

DAN THEW WRIGHT,
Attorney for Plaintiff.

CITY OF WASHINGTON,
District of Columbia, ss:

Josephus Wells being first duly sworn says that he is plaintiff in the above entitled cause and that the facts stated in the foregoing Bill of Complaint are true.

JOSEPHUS WELLS.

Sworn to before me and subscribed in my presence by Josephus Wells this 26 day of January A. D. 1915.

[SEAL.] JOHN O. HARMON, JR.,
Notary Public.

25¢ paid by affiant.
J. O. HARMON, JR.

6 "EXHIBIT A."

1830.

(In Triplicate.)

Contract for Automobiles for Use in the City Delivery and Collection Service at Washington, D. C.

This contract Made this Fourteenth day of February in the year of our Lord one thousand nine hundred and thirteen, by and between the United States of America (by the Postmaster General), of the first part, and Josephus Wells of No. 100 Sixth street southeast, Washington D. C.

Witnesseth, That, whereas, the proposal of the said party of the second part for furnishing to said Department at Washington, D. C., in such numbers, and in such numbers at a time, and from time to time, according to such schedule as may be prescribed by the Postmaster of Washington, D. C., during the period beginning February 12, 1913 and ending February 11, 1917, the equipments and services hereinafter specified, was accepted by the Postmaster General, and contract therefor awarded to said party:

Now, therefore, The said party of the second part hereby covenants and agrees to and with the said party of the first part as follows, to wit:

1. That the said party of the second part shall and will furnish and deliver at his sole risk and expense, in such numbers, and in such numbers at a time, as may be ordered by the Postmaster of Washington, D. C., in accordance with such schedule as he may prescribe, during the period beginning February 12, 1913 and ending February 11, 1917, the following described equipments, at the price herein specified, to wit: Four (4) automobiles with chauffeurs and such additional number of automobiles with chauffeurs to be paid for pro rata as may be required of the said party of the second part during the contract term, for use in the city delivery service of Washington, D. C. Each automobile to have a carrying capacity of not less than 1,500 pounds and be capable of maintaining a speed of 15 miles per hour; the automobiles to be painted a vermilion red shade and lettered with gold leaf with the inscription "United States Mail—Parcel Post." The sides to be provided with eighteen inch panels and a wire screen extending from the tops of the panels to the top of the machine; the back to be provided with a tail gate eighteen inches high and a hinged wire screen extending from the top of the tail gate to the top of the machine, so that the back can be entirely locked with one lock; each machine to be equipped with wind shield and side curtains. Each machine to be used eight hours daily on week days and one machine to be used approximately three hours daily on Sundays in the delivery and in the collection of mail at Washington, D. C., on routes already established, or that may hereafter be established, and to be paid for at the rate of Three thousand one hundred two dollars and fifty cents per annum for each equipment, payments to be made on the first day of each

month, or as soon thereafter as accounts can be adjusted and paid.

7 2. That the automobiles shall be painted in a manner satisfactory to the said postmaster and that they shall be used daily for the service in the foregoing paragraph, in accordance with schedules and routes fixed, or to be fixed, by the said postmaster.

3. That the said party of the second part hereby consents and agrees that any or all of the equipments contracted for herein may be discontinued at any time upon ninety days' notice from the said party of the first part.

4. That the automobiles shall be new at the beginning of the contract term; or, if not new, be rebuilt, when necessary, and repainted, and be substantially as good as new at the beginning of the contract.

5. That the automobiles will be kept in good condition, and in good repair, painted and varnished in a thorough manner, clean and in good condition, and lettered and ornamented, all in a manner to be approved by the said postmaster.

6. That the automobiles will be delivered at such points and at such times as the said postmaster shall from time to time designate.

7. That not less than one extra equipment, to take the place of such as may be temporarily disabled or withdrawn from the service, will be kept on hand without extra compensation therefor, so that the service may be promptly and expeditiously performed.

8. That the full equipment will be submitted to the inspection of the said postmaster at such times and places as he may designate.

9. That the said party of the second part shall be accountable and answerable in damages to the United States, or any person aggrieved, for the careful and faithful conduct of the chauffeurs furnished by the contractor in accordance with this contract.

10. That the Postmaster General may withhold payment for the equipments furnished if it shall appear to his satisfaction that, in any particular, this contract has not been complied with by the said party of the second part.

11. That fines may be imposed by the Postmaster General, unless satisfactory excuse be made within a reasonable time, for each of the following delinquencies on the part of the said party of the second part, to wit:

Failure to deliver the automobiles in accordance with the instructions of the said postmaster;

Failure to keep the equipments in first-class repair and properly painted;

Refusing, after demand, to provide competent drivers or to supply a relief automobile;

Failure to observe the schedule prepared for the delivery of equipments;

Or for any other delinquency or failure properly to perform any of the stipulations of this contract, or for violations of the Postal Laws and Regulations.

The fine in each case to be such sum as the Postmaster General may deem proper in view of the gravity of the delinquency or failure, and to be deducted from the pay due, or to become due,

the party of the second part. And, for repeated failures or delinquencies, or for violations of the Postal Laws and Regulations,
8 the Postmaster General may, at his opinion, annul this contract and award a new contract for supplying such equipments during the remainder of the period contemplated by this contract.

12. That during the period covered by this contract, in the event the party of the second part should, in any respect or particular, fail to furnish the equipments provided for in this contract, current requirements may be supplied by procuring in the open market equipments of the character agreed to be supplied under this contract; and the said party of the second part shall be liable for the excess in cost of each and all such equipments procured in open market over that stipulated in this contract. And in the event of any such failure, in the opinion of the Postmaster General, of any subsequent contractor, with whom a contract may have been entered into on account of any failure of the party of the second part to comply with and carry out any of the provisions of this contract, to fulfill any of the requirements of his contract, the said party of the second part shall be liable in like manner for all excess of cost of equipment secured in open market and under such subsequent contract or contracts, in consequence of such failure, during the whole of the period contemplated by this contract.

13. That neither this contract nor any interest therein shall be transferred or assigned by said party of the second part, and any such transfer or assignment shall cause the annulment of this contract, so far as the United States are concerned; all rights of action, however, for any breach hereof by the party of the second part being reserved to the United States.

14. That, at any time during the continuance of this contract, the Postmaster General may require new or additional sureties upon the bond hereto annexed, if, in his opinion, such sureties are necessary for the proper protection of the interests of the United States; and that the said party of the second part shall furnish such sureties to the satisfaction of the Postmaster General within ten days after notice so to do; and in default thereof this contract may be annulled, at the option of the Postmaster General.

15. That no Member of, or Delegate to, Congress shall be admitted to any share or part of this contract or to any benefit to arise thereupon.

16. That in the performance of this contract no person shall be employed who is undergoing sentence of imprisonment at hard labor which has been imposed by a court of competent jurisdiction.

17. That the annulment of this contract under any stipulation, reservation, or agreement herein contained, or any action taken by or on behalf of the United States in consequence or by reason of such annulment, shall not release or impair its obligation upon said party of the second part and the sureties upon his bond, or defeat or in anywise affect any right, claim, or interest of the United States accruing hereunder; but the liability of the said party of the second part and his said sureties in respect of such right, claim, and interest shall subsist, notwithstanding such annulment and action, and as

fully as if this contract in all respects continued in force and effect.

9 18. That all acts done by the First Assistant Postmaster General in respect of this contract shall be deemed and taken, for all purposes, to be the acts of the Postmaster General, within the meaning and intent of this contract.

In consideration of the furnishing by the said party of the second part of the equipments hereinbefore agreed by it to be supplied, and of his performance of all the other of the foregoing covenants, stipulations, and agreements on his part to be kept or performed, each and all of which are hereby made conditions of this contract—

The United States, party of the first part, covenants and agrees to and with the said Josephus Wells party of the second part, to order of said party the equipments specified and described in this contract which may be required by the Post Office Department at Washington, D. C., during the period from February 12, 1913 to February 11, 1917, and to pay to the said party of the second part for such equipments so supplied, which may have been duly delivered and found upon examination to conform to the contract requirements, at the price hereinbefore specified, such payments to be made after proper examination and adjustment of accounts.

In witness whereof, the said Postmaster General has hereunto affixed his signature and caused the same to be attested by the seal of the Post Office Department on the day and year first above written.

[Seal of P. O. D.]

[SEAL.] F. H. HITCHCOCK,
Postmaster General.

Signed, sealed, and delivered in the presence of—
F. D. GARDNER.

*And the said party of the second part has hereunto set his hand

---

* If a partnership, the name of each partner, followed by the firm name, should be signed to the contract, as:

"JAMES L. SMITH,
"HUGH L. SCOTT.
"Partners, Doing Business as Smith & Scott."

10 If a corporation, its name should be signed, followed by that of the officer authorized to bind the corporation by contract, as: "THE UNION SUPPLY COMPANY,
"By JAMES L. SMITH, *President."*
"Attest:
HUGH L. SCOTT, *Secretary."*

In addition, a certificate of the secretary should be furnished, showing that the corporation is authorized by its charter to enter into such a contract as is made herein; and that the person who signs such contract for and on behalf of the corporation as an officer thereof is such officer and authorized to bind the corporation by contract. If the corporation have a seal, it must be affixed to the contract; if it have no seal, this should be stated.

and seal on the 6th day of February one thousand nine hundred and thirteen.

The last clause of Article 7 on page 2 of this contract was erased before execution.

JOSEPHUS WELLS. [SEAL.]

Signed in the presence of—
C. E. WEBER.
W. B. HARTLEY.

Approved as to fact:
C. P. GRANFIELD,
First Assistant Postmaster General.

Approved as to form:
R. P. GOODWIN,
Assistant Attorney General for the Post Office Department.

Bond.

Know all men by these presents, That we Josephus Wells of Washington, D. C., in the State of — Principal, and Samuel H. Walker of Washington, D. C., in the State of — and William B. Hardy of Washington, D. C., in the State of — and —— —— of —, in the State of — Sureties, are held and firmly bound unto the United States of America in the just and full sum of Three Thousand dollars, lawful money of the United States, to be paid to the said United States of America or its duly appointed or authorized officer or officers; to the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 6th day of February, 1913.

Now, the conditions of this obligation are such, That, if the above-bounden Josephus Wells Samuel H. Walker, and William B. Hardy their heirs, executors, administrators, successors, and assigns, shall well and truly, and in a manner satisfactory to the Postmaster General, furnish the equipments described in the foregoing contract, executed on 6th February, 1913, by the principal herein, for supplying to the Post Office Department at Washington, D. C., during the period beginning February 12, 1913, and ending February 11, 1917, and in all other respects do and perform the covenants, agreements, and stipulations of such contract on their part to be performed, then this obligation to be void and of no effect; otherwise, to remain in full force and virtue.

Signature of principal:

JOSEPHUS WELLS. [SEAL.]

Signatures of sureties:

SAMUEL H. WALKER. [SEAL.]
WILLIAM B. HARDY. [SEAL.]

Signed and sealed in the presence of—
D. D. WALKER.
MARTIN C. WALKER.

11 **Justification of Sureties.*

DISTRICT OF COLUMBIA,
(State or District.)
County of —, ss:

Samuel H. Walker and William B. Hardy and —— ——, being each first duly sworn before me the undersigned, a Notary Public in and for said District, depose and say, and each for himself says, that he signed the foregoing obligation as surety; that his residence is therein correctly stated; that he is a freeholder of the District of Columbia and that he is worth the sum here set against his signature, over and above all debts and liabilities, in property in said District, not by law exempt from levy and sale on execution.

SAMUEL H. WALKER. $50,000.
WILLIAM B. HARDY. $6,000.

Subscribed and sworn to before me this 6th day of February A. D., 1913.

GEORGE J. GERGER,
(Signature of Officer.)
Notary Public.
(Title.)

Certificates.

(These certificates must be signed by a Postmaster, not by an Assistant Postmaster.)

I certify that, to the best of my knowledge and belief, Samuel H. Walker one of the sureties to the foregoing obligation, is worth the sum of $50,000.00 over and above all liabilities, exemptions, and incumbrances whatever.

N. A. MERRITT,
Postmaster of Washington, D. C.

Date: Feb. 12, 1913.

I certify that, to the best of my knowledge and belief, William B. Hardy one of the sureties to the foregoing obligation, is worth the sum of $6,000.00 over and above all liabilities, exemptions, and incumbrances whatever.

N. A. MERRITT,
Postmaster of Washington, D. C.

Date: Feb. 12, 1913.

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* Personal sureties must jointly justify in a sum equal to twice the penalty of the bond over and above all incumbrances and homestead exemptions, and must be residents of the same State, Territory, or District as the principal.

12 I certify that, to the best of my knowledge and belief, —— —— one of the sureties to the foregoing obligation, is worth the sum of $— over and above all liabilities, exemptions, and incumbrances whatever.

—— ——,
Postmaster of —.

Date: —.

(Endorsed:) Post Office Department. Contract for automobiles for use in the city delivery and collection service. P. O. Washington, D. C. Term Feb'y 12, 1913 to Feb'y 11, 1917. Contractor Josephus Wells. Equipment 4 Automobiles, $3,102.50 each per annum.

"Exhibit B."

In Replying Mention Initials and date. D. C. S.

Division of City Delivery,
Post-Office Department,
First Assistant Postmaster General,
Washington.

November 2, 1914.

Mr. Josephus Wells, 100 Sixth Street S. E., Washington, D. C.

Sir: After careful consideration of the matter it has been determined that it is in the interest of the service to conduct in Washington, D. C., an experimental combined screen wagon and city collection and delivery service under the provisions of the Postal Appropriation Act approved March 9, 1914, authorizing the Postmaster General to purchase and maintain wagons or automobiles in the operation of such an experimental service. It is essential to the execution of this purpose that your contract for furnishing four automobiles for use in the delivery and collection service in Washington, D. C., for the period from February 12, 1913 to February 11, 1917, be canceled, and you are hereby notified that under the third stipulation of the contract the use of all of the automobiles furnished thereunder will be discontinued at the close of business January 31, 1915, and the contract canceled effective on that date.

Respectfully,
(Signed) DANIEL C. ROPER,
First Assistant Postmaster General.

Sp2.
Registered.

Stipulation.

Filed January 29, 1915.

Jan. 29, 1915.

It is understood the use of documents filed in support of the bill at the hearing today is intended to dispense with proof of
13 their contents or authenticity but their legal effect is to remain open so far as both plaintiff and defendant are concerned.

DAN THEW WRIGHT,
Att'y for Plff.
JAMES B. ARCHER,
Attorney for Defendant.

"Ex. 3" to Bill.

Filed January 29, 1915. J. R. Young, Clerk.

(Copy.)

In replying mention initials and date.

Division of City Delivery,
Post Office Department,
First Assistant Postmaster General,
Washington.

January 27, 1915.

Hon. Daniel Thew Wright, Real Estate Trust Building, Washington, D. C.

Sir: The brief submitted with your letter of January 19, 1915, relative to the cancellation of the contract of Josephus Wells for furnishing four automobiles for use in the delivery and collection service in Washington, D. C., has been considered and after conferring with the Postmaster General in regard to the matter I have to advise you that the Department does not see its way clear to take action other than that indicated in the letter of November 2, 1914, addressed to Mr. Wells, advising him that under the third stipulation of the contract the use of all of the automobiles furnished thereunder will be discontinued at the close of business January 31, 1915, and the contract canceled effective on that date.

Respectfully,

DANIEL C. ROPER,
First Assistant Postmaster General.

Sp2.

Equity. No. 33195. Wells vs. Roper.

"Ex. 4" to Bill.

United States Post Office,
Washington, D. C., January 15, 1913.

Proposal for Furnishing Automobile Trucks.

The service of four automobiles, properly equipped for the parcel-post delivery and collection service, will be required for eight
14 hours each daily, actual running service, except Sundays, when only one machine will be needed for three hours, actual running service. One relief machine to be on hand at all times, to be used in cases of emergency. Bidder must be prepared to execute a bond in the amount of $3,000.00 for the faithful performance of service and compliance with terms of contract.

The machine to have a carrying capacity of not less than 1,500 pounds, and a speed capacity of at least 15 miles an hour, the drivers or chauffeurs to be furnished by the contractor.

The machines to be new, equipped with substantial bodies painted and varnished a vermillion red shade, and lettered in gold leaf with the inscription "United States Mail". The body to be, in size, approximately as follows: 9′ long, 4′ 10″ high, and 318″ wide at the bottom, inside measurements, at least 5′ 7″ of the length of the body to be exclusive of the seat and available for carrying capacity; the body to be not more than 2′ 2″ from the ground; the sides to be provided with 1′ 6″ panels, and a wire screen extending from the tops of the panels to the top of the machine; the back to be provided with a tail-gate 1′ 6″ high and a hinged wire screen extending from the top of the tail-gate to the top of the machine, so that the back can be entirely locked with one lock; the machines to be constructed with the engine in front, and with a running board on each side 1′ 6″ from the ground; a shield at the front and curtains at the sides; tires of the Motz type perferred.

The machines to be kept clean and in first-class condition at all times during the contract term.

Proposals will be received up to 12 o'clock noon Friday, January 17, 1913, at the Postmaster's Office, Washington, D. C. The right is reserved to reject any or all bids. Proposals to be submitted on the basis of a contract for four years; also the basis of a yearly contract; and also with the understanding that additional machines will be furnished at any time during the term of the contract at a unit proce to be stated.

Delivery to be made within 30 days from the date bidder's proposal is accepted.

Detailed information concerning the service to be performed may be obtained upon application to the postmaster.

(Signed) N. A. Merritt, *Postmaster.*

EX. 5 TO BILL.

Proposal for Furnishing Motor Vehicles for Use in the Parcel-post Delivery and Collection of Mail.

The Postmaster:

The undersigned, Josephus Wells, whose post office address is 100 6th St., S. E., Washington, D. C., proposes to furnish four (4) motor vehicles for use in the parcel-post delivery and collection of mail in Washington, D. C., under the advertisement issued by the Postmaster, dated January 15, 1913, subject to all the re-
15 quirements and conditions contained therein, and in the specifications prepared by the Postmaster, at the rate of Thirty-one hundred and two 50/100 ($3,102.50) dollars a year for each car, and if this proposal is accepted, I will execute a bond in the amount of $3,000.00 for the faithful performance of service and compliance with terms of contract. This bid is submitted on the basis of a contract for four (4) years. On a basis of a contract for one (1) year, I submit a bid of $3,558.75 *dollars* per car. It is understood that additional cars will be furnished at any time during the term of the contract at $3,102.50 *dollars* per car.

Delivery to be made within thirty (30) days from the date of acceptance of bid.

This proposal is made in my own interest and not as the agent or representative of another person or Company.

(Signed) JOSEPHUS WELLS.

January 17, 1913.

Order of Injunction.

Filed January 29, 1915.

* * * * * * *

This day this cause came on to be heard upon the Rule to show cause issued herein on January 27th 1915, and upon the Bill of Complaint, the Answer of the Defendant to said Rule, and the documents stipulated in open Court by the parties to be used and considered in this cause; and the Court having heard the arguments of counsel for the respective parties and being fully advised in the premises, it is this 29th day of January A. D. 1915 by the Court ordered, adjudged and decreed, that the Defendant, Daniel C. Roper, First Assistant Postmaster General of the United States, his agents successors and subordinates be and he and they are hereby restrained and enjoined until the final hearing of this cause and until the further order of the Court in the premises, from cancelling, annulling, discontinuing or interfering with the contract set forth in the Bill of Complaint herein, and from interfering with the carrying out, execution or performance by the United States of America or by Josephus Wells of the said contract, or of any of the terms

thereof, and from attempting so to do, the trial of this cause to be fixed for an early day.

WALTER I. McCOY,
Justice of the Supreme Court
of the District of Columbia.

Motion to Dismiss.

Filed February 10, 1915.

* * * * * * *

Now comes the defendant, by John E. Laskey, United States Attorney for the District of Columbia, and moves the court to dismiss the bill of complaint for the causes following:

First. It is manifest, upon the face of the bill of com-
16 plaint, that the defendant has no individual interest in the controversy or suit, and that the relief sought against him is in his official capacity only, as a representative of the government, which alone is to be effected by any decree herein, wherefore the said suit, as is manifest upon the face of the bill, is essentially and substantially a suit against the United States beyond the jurisdiction of the court.

Second. It is manifest, upon the face of the bill of complaint, that the plaintiff, in substance, seeks a decree for specific performance by the United States of alleged obligations under a contract, whereof the court is without jurisdiction.

Third. It appears by the bill of complaint that the plaintiff has plain, adequate and complete remedies at law, if he have any right.

Fourth. By the true and lawful construction and meaning of the contract sued upon, the defendant, in his official capacity, has the right and power to discontinue the use of the plaintiff's equipment in the manner alleged.

Fifth. By the true and lawful construction and meaning of the contract sued upon, the United States has an option to discontinue the use of the plaintiff's equipment in the manner alleged.

Sixth. For want of indispensable parties defendant.

Seventh. For want of any independent equity.

Eighth. Because any right of the plaintiff alleged is cognizable exclusively at law.

For other causes apparent upon the face of the bill of complaint.

JOHN E. LASKEY,
United States Attorney, D. C

Daniel Thew Wright, Esquire, Attorney for Plaintiff.

SIR: Take notice that the foregoing motion is calendared for hearing on Saturday, the 20th day of February, 1915, subject to the action of the court upon the motion for an earlier special day herein.

JOHN E. LASKEY,
United States Attorney, D. C.

Opinion.

Filed March 31, 1915.

* * * * * * *

This is a motion to dismiss the bill.

The plaintiff on the 6th day of February, 1913, entered into a contract with the United States through the Postmaster General to supply four or more automobiles with chauffeurs as might be required during the contract term of four years for use in the city mail delivery service of Washington, D. C. The bill alleges that the plaintiff has always performed his part of the contract and that the automobiles and services contracted for are still necessary and required by the Post Office Department and will be so required until the termination of the contract period, but that the de-
17 fendant, who is sued as First Assistant Postmaster General, has threatened to and will unlawfully, illegally, and wrongfully interfere between the plaintiff and the United States in carrying out the contract unless restrained and that he has already notified the plaintiff that the contract will be cancelled, the letter from the First Assistant Postmaster General to that effect stating that it is in the interest of the service to conduct in Washington an experimental combined screen wagon and city collection and delivery service under the Postal Appropriation Act approved March 9, 1914, authorizing the Postmaster General to purchase and maintain wagons or automobiles in the operation of such an experimental service, also that it is essential to the execution of these duties that the plaintiff's contract be cancelled and that under the paragraph 3 of the contract the use of all the plaintiff's automobiles will be discontinued and the contract cancelled. Paragraph 18 of the contract provides that all acts done by the First Assistant Postmaster General in respect to the contract shall be deemed and taken for all purposes to be the acts of the Postmaster General within the meaning and intent of the contract.

Paragraph 3 of the contract referred to in the letter of the First Assistant Postmaster General and under which he claims that the Government has the right to terminate the contract is as follows:

3. That the said party of the second part hereby consents and agrees that any and all of the equipments contracted for herein may be discontinued at any time upon 90 days' notice from the said party of the first part."

One of the grounds specified in the motion to dismiss is that this clause in the contract gives to the Government the right to terminate the contract at any time on ninety days' notice. That is not the language of the paragraph and it seems that if the government had intended to have the right to terminate the contract on ninety days' notice the contract would have stated so specifically. The proper interpretation of the paragraph is that the use of all or any of the automobiles may be discontinued according to the volume of

the business to be done by the post office of the kind for which they were to be used. If the contention of the Government is sound it might have given notice of termination the day after the plaintiff equipped himself with the automobiles and an interpretation which would give such power to the plaintiff would certainly be unreasonable. No one would contract with the Government in a matter of this kind on any such basis if clearly understood.

The Act of 1914 does not confer a right to terminate the plaintiff's contract.

Chicago and N. W. R. Co. vs. U. S., 104 U. S., 680.

The plaintiff claims that as the threatened act of cancellation would have no warrant from anything contained in the contract it would be merely the wrongful act of the First Assistant Postmaster General as an individual and therefore that the Court should re-
18 strain the doing of it, citing numerous authorities in support of the proposition that an illegal act is never an official act and therefore never the act of the State; but none of the cases cited apply to the present situation. What they hold is well summed up in Noble vs. Union River Logging Railroad, 147 U. S., 165 at 171 where the court says:

"We have no doubt the principle of these decisions applies to a case wherein it is contended that the act of a head of a department, under any views that could be taken of the facts that were laid before him, was ultra vires, and beyond the scope of his authority. If he has no power at all to do the act complained of, he is as much subject to an injunction as he would be to a mandamus if he refused to do an act which the law plainly required him to do.

But the Postmaster General had complete jurisdiction of the matter and so far as the contract is concerned stands for the United States and is vested with its power. U. S. vs. Barlow, 184 U. S., 123 at 135. The United States can break its contracts just as an individual can and subject to the same liability to respond in damages as in the case of a breach by an individual, (Purcell Envelope Co. vs. Smith, 26 Wash. L. Rep., 515) the only difference being that the Government must be proceeded against in the Court of Claims. All that the plaintiff can maintain is that the defendant had no right to break the contract, and not that he was acting in regard to a subject matter without the authority of any statute giving him jurisdiction of it and certainly not that he was refusing to obey the clear mandate of a statute which required nothing but strict obedience. It may not be possible to make a generalization that would take in every case which has been decided or every set of circumstances that may be presented but so far as concerns the cases cited by plaintiff and in fact all cases that have come to the attention of the Court there has been no interference by courts of equity with the acts of agents of the government by way of injunction unless those acts would constitute torts for which the plaintiff could recover damages at law, the basis of the application for interposition for equitable relief being the inadequacy of the admitted legal remedy;

or unless the act complained of might be said to be in the nature of a tort, for instance where if done it would cloud the plaintiff's title or the case is one which bears some analogy to the last mentioned class; that is to say, where the right of the plaintiff has been fixed by the action of an executive officer and his successor attempts to undo what has been so done. Those cases in which the writ of mandamus is issued involve the failure of a public official to perform a plain duty imposed by law for the benefit of the petitioner in the mandamus proceeding and there being a plain duty the *the* failure to perform it is in the nature of a tort. No case has been cited in which the Court has decided that an official may be enjoined from doing an act which will be merely a breach of a contract nor any in which a writ of mandamus has issued to compel an official to carry out a contract. It may be argued that the facts of the present case make it analogous to those where the defendant is sued
19 for wrongfully inducing a person to break his contract; but here it is really a party to the contract who is acting, if not, then there is no one who could call the plaintiff to account for clear breaches of the contract—the defendant stands for the Government as has already been shown.

The Court of Claims has jurisdiction of suits on contracts and for damages for breaches of contracts but beyond this the Government has not consented to suits against itself and until it does no suit will lie to enjoin a threatened breach of contract. This is the purport of the statement of the Supreme Court in U. S. vs. Eckford, 73 U. S. 484, where it is said:

"Settled rule of law, as universally understood, is that the Judiciary Act does not authorize a suit against the United States in any of the Federal courts. Where a party contracting with the United States is dissatisfied with the course pursued towards him by the officers of the government charged with the fulfilment of the contract, his only remedy, except in the limited class of cases cognizable in the Court of Claims, is by petition to Congress."

See also U. S. vs. McLemore, 145 U. S. 286.

The suit there was one in which the United States was named as a party defendant but as that Court has frequently said, the fact that an officer of the Government is named as a party does not necessitate a decision that the suit is not against the United States. (Stanley vs. Schwalby, 147 U. S. 518.) The real situation will be considered and if the nominal defendant has no personal interest and a decision for the plaintiff will operate in substance against the United States only the United States is then the real defendant and the suit cannot be maintained. There is no doubt that a decree for the plaintiff in the present suit would operate against the United States only nor that it would be in effect a decree for specific performance. If what has been said is sound it follows that even though it were practically certain that the threatened act of the defendant would irreparably damage the plaintiff he cannot have the doing of it enjoined as Congress has not conferred on any court the power to do so.

But if in a case where irreparable damage would follow the doing of an act such as is threatened by the defendant he could be enjoined no such case is made here. The plaintiff alleges that in order to carry out his contract as required by the Government he purchased five automobiles and their equipment built and equipped according to the specifications of the contract which are of no practical value except for use in carrying out the contract but worth what they cost for the execution of the contract; that he equipped a garage and repair shop in which to house, repair and keep in good condition said automobiles; that the garage is in a part of the city where there is no demand for garages and will have to be remodeled if not used as one; that he borrowed a large sum of money to enable him to pay for such equipment and that a large amount of such sum is still unpaid;
that his only means of payment of the loan must be derived
20 from his contract; that he has expended a large sum of money
for insurance premiums, for a bond to the Government, for gasoline, oil, salaries and repainting; that the rental value of the garage and the value of his services for the past two years were respectively $1,200 and $4,000; that he is a young man who has succeeded in establishing a small grocery store and grocery trade in which he has made a modest living for himself and family and finally that if he is prevented from carrying out his contract or if performance of it is interfered with even temporarily he will be rendered insolvent; his business will be destroyed and his prospects in life blasted. By these allegations he seeks to bring his case within the scope of the decision in Watson vs. Sutherland, 72 U. S. 74, the facts in which case were as follows:

"Watson & Co., appellants in the suit, having issued writs of fieri facias on certain judgments which they had recovered in the Circuit Court for the District of Maryland against Wroth & Fullerton, caused them to be levied on the entire stock in trade of a retail dry goods store in Baltimore, in the possession of one Sutherland, the appellee. Sutherland, claiming the exclusive ownership of the property, and insisting that Wroth & Fullerton had no interest whatever in it, filed a bill in equity, to enjoin the further prosecution of these writs of fieri facias, and to prevent, as he alleged, irreparable injury to himself. The grounds on which the bill of Sutherland charged that the injury would be irreparable, and could not be compensated in damages, were these: that he was the bona fide owner of the stock of goods, which were valuable and purchased for the business of the current season, and not all paid for; that his only means of payment were through his sales; that he was a young man, recently engaged on his own account in merchandising, and had succeeded in establishing a profitable trade, and if his store was closed, or goods taken from him, or their sale even long delayed, he would not only be rendered insolvent, but his credit destroyed, his business wholly broken up, and his prospects in life blasted."

The Court says at page 78:

"It is contended that the injunction should have been refused, because there was a complete remedy at law. If the remedy at law is sufficient, equity can not give relief, 'but it is not enough that there

is a remedy at law; it must be plain and adequate, or in other words, as practical and efficient to the ends of justice, and its prompt administration, as the remedy in equity.' How could Sutherland be compensated at law, for the injuries he would suffer, should the grievances of which he complains be consummated?

"If the appellants made the levy, and prosecuted it in good faith, without circumstances of aggravation, in the honest belief that Wroth & Fullerton owned the stock of goods (which they swear to in their answer), and it should turn out, in an action at law instituted by Sutherland for the trespass, that the merchandise belonged exclusively to him, it is well settled that the measure of damages, if the property were not sold, could not extend beyond the injury done to it, or, if sold, to the value of it, when taken, with interest from the time of the taking down to the trial.

"And this is an equal rule, whether the suit is against the
21 marshal or the attaching creditors, if the proceedings are fairly conducted, and there has been no abuse of authority. Any harsher rule would interfere to prevent the assertion of rights honestly entertained, and which should be judicially investigated and settled. 'Legal compensation refers solely to the injury done to the property taken, and not to any collateral or consequential damages, resulting to the owner, by the trespass.' Loss of trade, destruction of credit, and failure of business prospects, are collateral or consequential damages, which it is claimed would result from the trespass, but for which compensation cannot be awarded in a trial at law.

"Commercial ruin to Sutherland might, therefore, be the effect of closing his store and selling his goods, and yet the common law fail to reach the mischief. To prevent a consequence like this, a court of equity steps in, arrests the proceedings in limine; brings the parties before it; hears their allegations and proofs, and decrees, either that the proceedings shall be unrestrained, or else perpetually enjoined. The absence of a plain and adequate remedy at law affords the only test of equity jurisdiction, and the application of this principle to a particular case, must depend altogether upon the character of the case, as disclosed in the pleadings. In the case we are considering, it is very clear that the remedy in equity could alone furnish relief, and that the ends of justice required the injunction to be issued."

Referring to Watson vs. Sutherland the court said in Van Norden vs. Morton, 99 U. S., 378 at 379:

"The case, as it was, is a very close one and its main feature is absent in the one before us."

The present case is obviously very different from Watson vs. Sutherland. What was enjoined there was a trespass and the scant measure of damage there laid down is not the measure here as the authorities clearly demonstrate.

Purcell Env. Co. vs. Smith, 26 Wash. L. Rep. 515 at 517, where the court says:

"It is also alleged in the bill that the complainant provided an expensive plant for the purpose of manufacturing the material mentioned in the contract, and that if it be not permitted to perform the

contract, the result will be a great reduction in the value of the plant, as it will require a large expenditure to fit it for other uses. If the facts exist to make this a proper element of damages in a suit on the contract, there would be no difficulty in establishing in such suit all the facts necessary to show such reduction in value; and if facts do not exist to make it a proper element of damages, it would constitute no ground for an injunction."

Kennedy vs. U. S. 24 Court of Claims, 24 at 122.
Purcell Env. Co. vs. U. S. 47 Court of Claims, 1.

Where the Court of Claims applied the rule of measure of damage laid down by the Supreme Court as quoted, citing U. S. vs. Behan, 110 U. S. 338, 343, and quoting from that case as follows:

"Whatever rule may be adopted in calculating the damages
22 to a contractor when, without his fault, the other party, during its progress, puts an end to the contract before completion, the object is to indemnify him for his losses sustained and his gains prevented by the act-on of the party in fault, viewing these elements with relation to each other. The profits and losses must be determined according to the circumstances of the case and the subject-matter of the contract. The reasonable expenditures already incurred, the unavoidable losses incident to stoppage, the progress attained, the unfinished part, and the probable cost of its completion, the whole contract price, and the estimated pecuniary result, favorable or unfavorable to him, had he been permitted or required to go on and complete his contract, may be taken into consideration. Sickels' Case, 1 C. Cls. R. 214; Speed's case, 2 C. Cls. R. 429; affirmed on appeal, 8 Wall. 77, and 7 C. Cls. R. 93; Wilder's Case, 5 C. Cls. R. 468; Bulkley's case, 7 C. Cls. R. 543; 19 Wall. 37; and 9 C. Cls. R. 81; Parish's Case, 100 U. S. 600; Field's Case, 16 C. Cls. R. 434; Moore & Krone's Case, 17 C. Cls. R. 17; Power's Case, 18 C. Cls. R. 493; Masterson v. Mayor, &-., of Brooklyn, 7 Hill, 61.

"The amount of the claimant's unavoidable expenditures and losses already incurred are set forth in the findings. But we can give him nothing on account of prospective profits, because none have been proved. So, for the same reason, we can deduct nothing from his expenditures on account of prospective losses which he might have incurred had he not been relieved from completing his contract. This leaves his expenditures as the only damages proved to have resulted to him from the defendants' breach of contract, and they are, therefore, the proper measure of damages under all the circumstances of the case."

The Purcell case was so much like the one now under consideration that further discussion of it seems hardly necessary, but it is perfectly clear that the plaintiff can recover not only what he will lose on his plant, including his automobiles, but also the profits which he would make if permitted to carry out the contract as they are the direct and immediate fruits of the contract and not at all remote or speculative. The plaintiff will not have to stand ready to perform

during the remainder of the contract period. He may regard the contract as terminated and sue for his damage.

Purcell Env. Co. vs. U. S., 47 Court of Claims.
Lovell vs. St. Louis Mut. Ins. Co., 111 U. S. 264
U. S. vs. Shoemaker, 7 Wall. 327 at 338

he may abandon his contract.

Williams vs. U. S., 15 Court of Claims, 461.

The defendant cannot arbitrarily determine that the needs of the service do not require the plaintiff's automobiles. (Williams vs. U. S., Supra.)

The business which the plaintiff in Watson vs. Sutherland contended would be ruined was that for the carrying on of which the goods sought to be levied on were purchased and it was the threatened ruin of that business which was relied on as a basis for
23 the interference of the court, not the ruin of another business conducted by the plaintiff, consequently the allegation of the ruin of the grocery business of the plaintiff in this suit does not bring this bill within the decision in the Watson case. See Masterson vs. The Mayor, 7 Hill, (N. Y.) 61.

The plaintiff claims that a suit in the Court of Claims is not a remedy at law which ordinarily means a remedy by an action tried before a jury; but it has been held differently by this court in Purcell Envelope Co., vs. Smith, 26 Wash. L. Rep. 515, so far as cases like the present one are concerned and the contention made there as here that it was not such a remedy because a judgment of the Court of Claims is not collectible as a matter of right was also disposed of adversely to the plaintiff's contention. The contention of the plaintiff would support an argument as follows: equity will enjoin when there is not an adequate remedy at law for the breach of a contract; a suit in the Court of Claims is not a remedy at law, therefore there should be an injunction even though the judgment of that court would be for an amount adequate to compensate for loss. To so hold would bring into a court of equity every contractor with the Government who claims that the Government is wrongfully preventing him from performing his contract.

The bill will be dismissed.

WALTER I. McCOY, *Justice.*

Dated: March 31, 1915.

Motion to Restore & Continue Injunction Pending Appeal.

Filed April 5, 1915.

* * * * * * *

Now comes the plaintiff and moves the Court to restore and to continue the injunction herein heretofore issued pending the appeal herein to the Court of Appeals, or so much of said injunction as is

necessary to preserve the "status quo" herein pending an appeal, on the ground

1. That the same is necessary to affording the relief sought by the plaintiff in the event his appeal turns out successful.

2. That if the contractual status set out in the bill is permitted to be destroyed or changed pending appeal, it cannot be restored in event the appeal is successful.

3. It is necessary to the ascertainment of ultimate justice between the parties.

4. For other reasons apparent on the record.

DAN THEW WRIGHT,
Att'y for Pl'ff.

24 *Affidavit in Opposition to Reinstatement of Injunction.*

Filed April 5, 1915.

* * * * * * *

DISTRICT OF COLUMBIA, *To wit:*

Albert S. Burleson, being first duly sworn, on oath, says: That he is the Postmaster-General of the United States; that the post-office appropriation Act for the fiscal year ending June 30, 1915, approved March 4, 1914, contains the following appropriation:

"Wagon service, 1915. For regulation screen or other wagon service, $2,600,000.

Provided, that out of this appropriation the Postmaster-General is authorized, in his discretion, to use such amount thereof as may be necessary for the purchase and maintenance of wagons or automobiles for and the operation of an experimental combined screen wagon and city collection and delivery service."

That is to say, an experimental service comprehending the transportation of mail matter between the post-office and its branches; the collection of mail matter from street letter-boxes, and post-office stations; the delivery of letters, parcels and mail matter of all other classes by means of government owned automobiles, operated by employees of the United States, instead of rented automobiles and horse drawn vehicles capable of performing but one of said several classes of service at a time; that the object of said experimental service is to determine the policy and feasibility of installing such combined service throughout the United States wherever practicable; that at the time of the institution of this suit it had been officially considered and determined to inaugurate such experimental service at Washington; that pursuant to such determination all arrangements had been made to put such service into immediate operation; that it was intended that upon the result of such experimental service should depend the policy of the Post-Office Department in connection with the acceptance or rejection of contracts for service by private contractors throughout the large cities of the Middle West, wherein advertisements for postal and mail service are pending; that such ex-

perimental service was not established elsewhere, and has not been practicable at other points, and nine auto vehicles have been purchased for use in such service in Washington City; that by virtue of the temporary injunction the benefit of such experimental service has been interrupted and delayed for the past two months; that so far as pending contracts and advertisements and proposals are concerned, the benefits of such experimental service will be entirely lost if the injunction be reinstated or continued pending appeal; that the administration of the service will be greatly hampered, and the development of the policy of the Department will be delayed and interfered with; that the resulting injury to the postal service comprehends more than the financial loss to the government
25 in that it will interfere with the development of the policy of the entire postal service throughout the United States depending upon such experimental service, and entail great inconvenience to the Post Office Department in the administration of such service with consequent irreparable loss to the United States and the public which cannot be compensated by a money recovery.

A. S. BURLESON.

Subscribed and sworn to before me, this 5th day of April, 1915.

[SEAL.] ABRAHAM B. KEEFER,
Notary Public, D. C.

Entry Overruling Motion to Restore & Continue the Injunction.

Filed April 5, 1915.

* * * * * * *

This cause coming on to be heard upon the motion of the plaintiff to restore and continue the injunction herein heretofore issued upon an appeal to the Court of Appeals, the Court finds said motion not well taken and hereby overrules the same, to all of which the plaintiff excepts.

WALTER I. McCOY, *Justice.*

Dated: April 5, 1915.

Decree.

Filed April 5, 1915.

* * * * * * *

This cause came on for hearing upon the bill of complaint and exhibits and upon the motion of the defendant to dismiss the bill, and was argued by the counsel for the respective parties and submitted to and duly considered by the Court;

Whereupon, it is this 5th day of April, 1915, adjudged, ordered and decreed that the injunction heretofore issued in this cause be,

and the same hereby is dissolved, and the bill of complaint herein dismissed at the plaintiff's cost.

It is further adjudged, ordered and decreed that the defendant have leave to apply, within thirty days, for an inquiry of damages sustained by the wrongful or inequitable suing out of the injunction heretofore issued herein, and for a further decree for such damages, if any, against the plaintiff and his surety.

By the Court:

WALTER I. McCOY, *Justice.*

To all of which the plaintiff excepts and gives notice of appeal and the court fixes the amount of the bond for costs at $100.

WALTER I. McCOY, *Justice.*

26 *Memorandum.*

April 19, 1915.—Bond of plaintiff on appeal for $100 approved and filed.

Assignments of Error.

Filed April 19, 1915.

* * * * * * *

Now comes the Plaintiff and makes the following assignments of Error.

1. The Court erred in sustaining the defendant's motion to dismiss the Bill.
2. The Court erred in dismissing the Bill.
3. The Court erred in dissolving the preliminary injunction.
4. The Court erred in refusing the injunction prayed by the Bill.

DANIEL THEW WRIGHT,
T. M. WAMPLER,
Att'ys for Pl'ff.

Designation of Record.

Filed April 19, 1915.

* * * * * * *

The clerk will please prepare a transcript of Record for appeal, as follows, Transcript of

1. Bill & attached Exhibit.
2. Stipulation & Exhibits Nos. 3, 4, & 5.
3. Order of injunction.
4. Motion of Def't to dismiss bill.
5. Opinion of the Court on motion to dismiss.
6. Motion of Pl'ff to continue injunction pending appeal.

7. Order overruling motion to continue injunction.
8. Decree dismissing Bill.

DANIEL THEW WRIGHT,
T. M. WAMPLER,
Att'ys for Pl'ff.

Copy received April 19th, 1915.

JAMES B. ARCHER,
Att'y for Defendant.

27 *Additional Designation of Record.*

Filed April 19, 1915.

* * * * * * *

The clerk will include in the transcript of record on appeal herein the following:

1. Affidavit of Albert S. Burleson, in opposition to plaintiff's motion to continue injunction pending appeal.
2. This order.

JOHN E. LASKEY,
United States Attorney, D. C.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 43, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 33195 in Equity, wherein Josephus Wells is Plaintiff and Daniel C. Roper, First Assistant Postmaster General of the United States is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 3rd day of May, 1915.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2820. Josephus Wells, appellant, vs. Daniel C. Roper, &c. Court of Appeals, District of Columbia. Filed May 8, 1915. Henry W. Hodges, clerk.

28 FRIDAY, October 15th, A. D. 1915.

No. 2820.

JOSEPHUS WELLS, Appellant,

vs.

DANIEL C. ROPER, First Assistant Postmaster General of the United States.

The argument in the above entitled cause was commenced by Mr. Dan Thew Wright, attorney for the appellant, and was continued by Mr. J. B. Archer, attorney for the appellee, and was concluded by Mr. Dan Thew Wright, attorney for the appellant.

29 No. 2820.

JOSEPHUS WELLS, Appellant,

v.

DANIEL C. ROPER, First Assistant Postmaster General of the United States.

Opinion.

Mr. Chief Justice Sheppard delivered the opinion of the Court:

The plaintiff, Josephus Wells, filed this bill against Daniel C. Roper as First Assistant Postmaster-General of the United States to obtain an injunction against a threatened breach of contract between plaintiff and the United States for certain post-office equipments.

The bill alleges that about the fourteenth day of February, 1913, both parties entered upon the performance of their contract, according to its terms, and that plaintiff has at all times complied with every duty and obligation on his part to be performed upon said contract and with every demand or requirement requested of him by the United States under such contract and that the United States has at all times, as the same became due under said contract fully paid the plaintiff according to its terms for the equipment and service rendered by the plaintiff; that plaintiff has never been guilty of any failures or delinquencies under said contract and has never violated the Postal Laws or Postal Regulations; that it is not now, and never has been claimed or pretended by the United States of America, or by any person or officer whatsoever that the plaintiff, or any one in his behalf, has at any time or in any respect failed in the performance of any of his duties or obligations under said contract, or that he has been guilty of any delinquency in the performance of any obligation or stipulation of said contract; that equipments and service as specified in said contract are still necessary to and required by the Post-Office Department at Washington

and will be necessary to and required by the said Department up to and including the fourteenth day of February, 1917; that the plaintiff is ready, able, and willing and anxious to carry out and complete the said contract and every duty and obligation and stipulation thereto on his part to be performed according to its terms; that the defendant has no power, right or authority, either as First Assistant Postmaster-General or in any other capacity to cancel said contract or any part thereof. Yet the defendant has threatened to and will, unless restrained by the court, unlawfully, wilfully and wrongfully interfere between the plaintiff and the United States of America in the carrying on and execution of said contract; in order, as he, the defendant, says "to conduct in Washington, D. C., an experimental combined screen wagon and city collection and delivery service." That in pursuance of his unlawful plan and purpose the defendant has, unlawfully and without any power or authority, undertaken to order that said contract be canceled. At the taking effect of the contract the plaintiff was required by the United States to purchase five new automobiles and their equipment for use under said contract, and he did at that time purchase five new automobiles at a cash cost to him of $9,250. The plaintiff was at the same time required, and he did, construct and equip a garage and repair shop in which to house, repair and keep in first-class condition the said automobiles. The cash cost to plaintiff of constructing a building into a garage with the necessary fire proofing and sewerage required by the regulations of the District of Columbia was $2,535; the necessary cash cost to plaintiff for equipping the garage and machine shop, including electric wiring, electric motor, lathe, tools, etc., was $1,120; in addition to which and necessary to the performance of said contract by the plaintiff he has paid out in cash for fire insurance premiums, liability insurance premiums, bond to the Government, for gasoline, lubricating oil, salaries, repainting and revarnishing said automobiles, $12,799; the reasonable rental value for his garage building for the two years last past devoted to said contract is $1,200; the reasonable value for his own time and services for the two years last past devoted to the execution of said contract is $4,000.

In order to enable himself to acquire the equipment necessary for the execution of said contract, the plaintiff borrowed the sum of $11,000 in money; devoting all of it to that purpose and has paid interest, in addition to the expenditures above-named, at the rate of 6 per cent per annum on his said loan, a large amount of which is still owing and unpaid and will become due in February, 1915; his only means of payment must be derived from and through the contract with the United States aforesaid; he is a young man who has succeeded in establishing a small grocery store and grocery trade in which he has made a modest living for himself and his family. If this contract with the United States of America is interfered with by the defendant and he, the plaintiff, and the United States of America prevented from carrying it out and he, the plaintiff, deprived of its advantages, or its performance even temporarily interfered with, he will be rendered insolvent, his credit will be

destroyed, his business will be wholly broken up and his prospects in life blasted.

The aforesaid building, which he constructed into and equipped as a garage, only for the purpose of executing said contract, is first-class for that purpose but utterly unfit for any other purpose; it is situated in the southeast section of Washington City in a locality where there is no use for and no demand for automobile garages; and if plaintiff is deprived of said contract, said building will be useless and unrentable in its present condition and will have to be again remodeled in order to be of any use or of any rental value. Each of the said automobiles is built according to the specifications set out in said contract; each is in first-class condition for the completion of said contract and worth substantially its original cost, but because of the peculiar construction and equipment required by the contract, they are of no practical value except for handling the mails and for the execution of said contract; and unless plaintiff is permitted to execute said contract said automobiles will be useless to him and will be practically unsaleable and of a trifling and insignificant market value, solely because equipped for said contract.

Defendant proposes to, or has threatened, and will, upon the first day of February, 1915, unless restrained and enjoined by the court, announce and promulgate publicly and throughout the Post-Office Department of the United States that the said contract is annulled and will, unless restrained and enjoined by the court, by the unlawful and wrongful exercise of his office as First Assistant Postmaster-General of the United States, obstruct and prevent the plaintiff and the United States of America from the further execution of said contract on the part of either of the parties thereto, and will prevent the plaintiff from receiving his compensation under said contract, which now amounts to $1,034 per month, and the result of the said abuse of the powers of his office by the defendant will be to deprive the plaintiff in the future of all the advantages and compensation of said contract.

If plaintiff and the United States of America are permitted to execute said contract according to its terms, the plaintiff will be able to repay to his creditors the money which, as above stated, he borrowed in order to pay for and acquire the automobiles and garage necessary for the execution of said contract. The said contract and the compensations thereunder have been and are the plaintiff's only resource for meeting the aforesaid obligations, and plaintiff has no adequate remedy at law.

Plaintiff prays an order restraining the defendant, his agents, and subordinates, from annulling or attempting to annul the said contract and from interfering or attempting to interfere between the plaintiff and the United States of America in the proper and lawful execution of said contract by the plaintiff according to its terms, and that on final hearing said injunction may be made perpetual.

Attached as an exhibit to the bill is the contract entered into February 14, 1913, by and between the United States of America, party of the first part, and Josephus Wells, party of the second part.

This contract recites that the proposal of the party of the second

part for furnishing to the said Department at Washington, in such numbers, and in such numbers at a time, and from time to time, according to such schedule as may be prescribed by the postmaster of Washington, D. C., during the period beginning February 12, 1913, and ending February 11, 1917, the equipments and services hereinafter specified, was accepted by the Postmaster-General, and contract therefore awarded to said party.

31 The covenants are that the party of the second part shall and will furnish and deliver at his sole risk and expense, in such numbers, and in such numbers at a time, as may be ordered by the postmaster at Washington, D. C., in accordance with such schedule as he may prescribe, during the period beginning February 12, 1913, and ending February 11, 1917, the following described equipments, at the prices specified, to wit: Four automobiles with chauffeurs and such additional number of automobiles with chauffeurs to be paid for pro rata as may be required of the said party of the second part during the contract term, for use in the city delivery service of Washington, D. C. The contract proceeded to prescribe the capacity of the said automobiles and their rate of speed and the manner in which they shall be constructed, and provides that the United States shall pay at the rate of $3,102.50 per annum for each equipment, payments to be made on the first day of each month.

The third provision of the contract is "that the said party of the second part hereby consents and agrees that any or all of the equipments contracted for herein may be discontinued at any time upon ninety days' notice from the said party of the first part."

The remainder of the contract makes provision for the keeping of the said equipment and its delivery as notified by the postmaster and certain provisions for fines for delinquencies on the part of the party of the second part, and providing that for repeated failures or for violation of the Postal Regulations, the Postmaster-General may, at his option, annul this contract and award a new contract for supplying such equipments during the remainder of the period contemplated by this contract. A further provision is that the annulment of this contract under any stipulation, reservation, or agreement herein contained, or any action taken by or on behalf of the United States in consequence or by reason of such annulment, shall not release or impair its obligation upon said party of the second part and the sureties upon his bond.

The eighteenth provision is that all acts done by the First Assistant Postmaster-General in respect of this contract shall be deemed to be the acts of the Postmaster-General, within the meaning and intent of this contract.

The contract is signed by F. H. Hitchcock, Postmaster-General, and by the plaintiff.

Other exhibits show the bond given by the plaintiff for the performance of the contract and a letter of November 2, 1914, directed to plaintiff and signed by the defendant, as First Assistant Postmaster-General, which recites "after careful consideration of the matter it has been determined that it is in the interest of the service to

conduct in Washington, D. C., an experimental combined screen wagon and city collection and delivery service under the provisions of the Postal Appropriation Act, approved March 9, 1914, authorizing the Postmaster-General to purchase and maintain wagons or automobiles in the operation of such an experimental service. It is essential to the execution of this purpose that your contract for furnishing four automobiles for use in the delivery and collection service in Washington, D. C., for the period from February 12, 1913, to February 11, 1917, be canceled, and you are hereby notified that under the third stipulation of the contract the use of all of the automobiles furnished thereunder will be discontinued at the close of business January 31, 1915, and the contract canceled effective on that date."

Plaintiff protested against this notice of cancellation and, through his counsel, had correspondence with defendant.

Another letter attached as an exhibit, January 25, 1915, directed to counsel for plaintiff, and signed by Daniel C. Roper as First Assistant Postmaster-General recites the receipt of his letter relative to the cancellation of the contract, and, after conferring with the Postmaster-General, in regard to the matter states "I have to advise you that the Department does not see its way clear to take action other than that indicated in the letter of November 2, 1914, addressed to Mr. Wells, advising him that under the third stipulation of the contract the use of all of the automobiles furnished thereunder will be discontinued at the close of business January 31, 1915, and the contract canceled effective on that date."

Rule to show cause was issued and a temporary injunction awarded January 29, 1915.

The Appropriation Act of March 4, 1914, contained an appropriation for regulation screen or other wagon service, and provided that out of this appropriation the Postmaster-General is authorized, in his discretion, to use such amount thereof as may be necessary for the purchase and maintenance of wagons or automobiles for, and the operation of, an experimental combined screen wagon and city collection and delivery service.

This is set up by an affidavit of the Postmaster-General in opposition to the injunction, who further says, that this experimental service comprehended the transportation of mail matter between the post-office and its branches; the collection of mail matter from the street letter boxes, and post-office stations; the delivery of letters, parcels and mail matter of all other classes by means of Government owned automobiles, operated by employees of the United States, instead of rented automobiles and horse-drawn vehicles capable of performing but one of said several classes of service at a time; that the object of said experimental service is to determine the policy and feasibility of installing such combined service throughout the United States wherever practicable; that at the time of the institution of this suit it had been officially considered and determined to inaugurate such experimental service at Washington; that pursuant to such determination all arrangements had been made to put such service into immediate operation; that it was intended that upon the

result of such experimental service should depend the policy of the Post-Office Department in connection with the acceptance or rejection of contracts for service by private contractors throughout the large cities of the middle west, wherein advertisements for postal and mail service are pending; that such experimental service was not established elsewhere, and has not been practicable at other points, and nine automobiles have been purchased for use in such service in Washington City; that by virtue of the temporary injunc-
32 tion the benefit of such experimental service has been interrupted and delayed for the past two months; that so far as pending contracts and advertisements and proposals are concerned, the benefits of such experimental service will be entirely lost if the injunction be reinstated or continued pending appeal; that the administration of the service will be greatly hampered, and the development of the policy of the Department will be delayed and interfered with; that the resulting injury to the postal service comprehends more than the financial loss to the Government in that it will interfere with the development of the policy of the entire postal service throughout the United States depending upon such experimental service, and entail great inconvenience to the Post-Office Department in the administration of such service with consequent irreparable loss to the United States and the public which can not be compensated by a money recovery.

February 10, 1915, the defendant moved to dismiss on the ground that the defendant had no individual interest in the controversy, and that the relief sought against him is in his official capacity only, as a representative of the Government, which alone is to be affected by any decree herein; wherefore the said suit as manifest upon the face of the bill is essentially and substantially a suit against the United States beyond the jurisdiction of the court.

Second, it is manifest, upon the face of the bill of complaint, that the plaintiff seeks a decree for specific performance by the United States of alleged obligations under a contract, whereof the court is without jurisdiction.

It appears by the bill of complaint that the plaintiff has plain, adequate and complete remedies at law, if he have any right.

Fourth, by the true and lawful construction and meaning of the contract sued upon, the defendant, in his official capacity, has the right and power to discontinue the use of the plaintiff's equipment in the manner alleged.

That by the true construction of the said contract the United States has an option to discontinue the use of the plaintiff's equipment in the manner alleged.

This motion was heard, and on March 31, 1915, was sustained and the bill dismissed.

It will be observed that the third article of the contract provides that any and all of the equipments contracted for may be discontinued upon ninety days' notice which was given by the First Assistant Postmaster-General, whose acts, by section 18, in respect to this contract, shall be taken to be the acts of the Postmaster-General.

The letter of the Assistant Postmaster-General of November 14,

1914, notified the plaintiff that the use of his equipments would be discontinued on January 31, 1915, and that his contract would be canceled, effective on that date.

Reconsideration of this was refused and the former notice adhered to.

The Assistant Postmaster-General had the right to discontinue the use of the equipments by giving ninety days' notice. All that the plaintiff was to furnish under the contract was these equipments; this was what he was paid for.

The court have not agreed that under the contract the stoppage of these equipments, under clause three (3), of the contract, was essentially the termination of plaintiff's service, and consequently of his contract.

In the opinion of the writer this was necessarily so, and that notice that the contract would be canceled added nothing to this effect.

However this may be, any suit for breach of a contract or for its specific performance would be a suit against the United States. Their interests only are involved. Congress had appropriated the money and authorized the Postmaster-General to inaugurate the special service provided for in the Appropriation Act of 1914, and he had made preparations for the new service in lieu of plaintiff's. The bill for injunction against him to prevent putting into effect the new service would act as a negative specific performance by preventing the Postmaster-General from substituting the new service, and would affect only the interests of the United States. No action for specific performance would lie against the United States.

The form of the suit for injunction is a negative specific performance which would compel the United States to accept the performance of a contract and thereby affect their interest.

The First Assistant Postmaster-General is sued officially, as such, and his restraint from terminating the contract is the restraint of the United States, whose official he is.

Notwithstanding the serious character of the injuries that would be inflicted upon plaintiff by cessation of the contract, the only remedy that he will have therefor is in the Court of Claims where alone the United States permit themselves to be sued.

The case is wholly unlike that of Noble v. Union River Logging Railroad, 147 U. S., 165.

In that case a property right had become vested in the plaintiff by the action of the Secretary of the Interior in accordance with law. As decided, this was a vested right which no succeeding secretary had the right to set aside. It was his personal act and involved an invasion of right over which he had no jurisdiction.

The defendant is not interfering in this contract in his individual capacity, but solely as an officer of the United States; he has no personal interest in the matter.

It appearing that Congress had made an appropriation for experimental service in Washington which might conflict with that in plaintiff's contract, the First Assistant Postmaster-General notified him of the discontinuance of his equipment. This he had a right to do under the contract. It was within his discretion.

The fact that he accompanied it also with notice that the contract would be canceled is immaterial, for the reason that the discontinuance of the equipment, which was the sole service to be performed by the plaintiff, was itself a termination of the contract.

If, however, he exceeded his power in the latter respect the question is one in which the United States only are interested and if plaintiff has been aggrieved he would have such remedy as the law provides by an action in the Court of Claims, where alone the United States can be sued.

The court was right in dismissing the bill and its decree is affirmed with costs. Affirmed.

33 January Term, 1916.

MONDAY, January 3rd, A. D. 1916.

No. 2820.

JOSEPHUS WELLS, Appellant,

vs.

DANIEL C. ROPER, First Assistant Postmaster General of the United States.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

PER MR. CHIEF JUSTICE SHEPARD.

January 3, 1916.

34 In the Court of Appeals of the District of Columbia, October Term, 1915.

No. 2820.

JOSEPHUS WELLS, Appellant,

vs.

DANIEL C. ROPER, Appellee.

Petition for Appeal.

Now comes the said Josephus Wells and says that in the rendition of the judgment of the Court here, affirming the judgment of the Supreme Court of the District of Columbia herein, error has inter-

vened to his prejudice, as well as in the rendition of the said judgment in the Supreme Court of the District of Columbia.

Wherefore he prays an appeal in this behalf to the Supreme Court of the United States for the correction of the errors aforesaid, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States in accordance with law.

The petitioner shows to your Honors:

1. That in this case the validity of an authority exercised under the United States is drawn in question.

3. The scope of a power of an officer of the United States is drawn in question.

3. The scope of a power of an officer of the United States is drawn in question.

4. The construction of a law of the United States is drawn in question by the defendant.

JOSEPHUS WELLS,

By DANIEL THEW WRIGHT AND
T. MORRIS WAMPLER,
Attorneys.

35 In the Court of Appeals of the District of Columbia, October Term, 1915.

No. 2820.

JOSEPHUS WELLS, Appellant,

vs.

DANIEL C. ROPER, Appellee.

Assignment of Errors.

Now comes the said Josephus Wells and makes the following assignment of errors in the above entitled cause:

The said Court of Appeals erred:

1. In affirming the judgment of the Court below.
2. In decising that the Motion to Dismiss the Bill was well taken.
3. In deciding that the Bill should be dismissed.
4. In deciding that the defendant D. C. Roper had authority to cancel the contract described in the Bill.
5. In deciding that the defendant D. C. Roper had power of authority to discontinue the use of the equipment provided for in the contract set out in the Bill.
6. The said Court erred in construing the contract set out in the Bill as empowering the defendant to cancel the same.
7. The said Court erred in construing the contract set out in the Bill as empowering the defendant to dispense with the automobiles and equipment provided for in said contract.

8. The said Court erred in considering an affidavit of Albert S. Burleson, upon the Motion to Dismiss the Bill.

DANIEL THEW WRIGHT,
T. MORRIS WAMPLER,
Attorneys for Appellant.

(Endorsed:) No. 2820. Josephus Wells, Appellant, vs. Daniel C. Roper, Appellee. Petition for Appeal. Assignment of Errors. Court of Appeals, District of Columbia. Filed Feb. 1, 1916. Henry W. Hodges, Clerk.

36 SATURDAY, February 5th, A. D. 1916.

No. 2820.

JOSEPHUS WELLS, Appellant,

vs.

DANIEL C. ROPER, First Assistant Postmaster General of the United States.

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is by the Court this day ordered that said appeal be, and the same is hereby, allowed, and the bond for costs is fixed at the sum of three hundred dollars.

37 (*Bond on Appeal.*)

Know all men by these presents, That we, Josephus Wells, as principal, and Christine E. Weber, as surety, are held and firmly bound unto Daniel C. Roper in the full and just sum of Three Hundred dollars, to be paid to the said Daniel C. Roper — certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 7th day of February, in the year of our Lord one thousand nine hundred and sixteen.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between Josephus Wells and Daniel C. Roper a decree was rendered against the said Josephus Wells and the said Josephus Wells having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Daniel C. Roper citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof;

Now, the condition of the above obligation is such, That if the said Josephus Wells shall prosecute said appeal to effect, and answer

all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JOSEPHUS WELLS. [SEAL.]
CHRISTINE E. WEBER. [SEAL.]

Sealed and delivered in presence of—as to both:

JAMES B. ARCHER.

Surety satisfactory,

JAMES B. ARCHER,
Ass't U. S. Att'y D. C.

Approved by—

SETH SHEPARD,
Chief Justice Court of Appeals
of the District of Columbia.

37½ [Endorsed:] 2820. Josephus Wells, Appellant, vs. Daniel C. Roper, First Assistant Postmaster General of the United States. Bond on Appeal to Supreme Court United States. Court of Appeals, District of Columbia. Filed Feb. 8, 1916. Henry W. Hodges, Clerk.

38 UNITED STATES OF AMERICA, *ss:*

To Daniel C. Roper, First Assistant Postmaster General of the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's office of the Court of Appeals of the District of Columbia, wherein Josephus Wells is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 8th day of February, in the year of our Lord one thousand nine hundred and sixteen.

SETH SHEPARD,
Chief Justice of the Court of Appeals
of the District of Columbia.

Service acknowledged this 8th day of February, 1916.

JOHN E. LASKEY,
Counsel for Appellee.

[Endorsed:] Court of Appeals, District of Columbia. Filed Feb. 8, 1916. Henry W. Hodges, Clerk.

39 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 38 inclusive constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Josephus Wells, Appellant, vs. Daniel C. Roper, First Assistant Postmaster General of the United States, No. 2820, January Term, 1916, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 12th day of February, A. D. 1916.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals
of the District of Columbia,

By MONCURE BURKE,
Assistant Clerk.

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled Feb. 17, 1916. H. W. H.]

Endorsed on cover: File No. 25,140. District of Columbia Court of Appeals. Term No. 103. Josephus Wells, appellant, vs. Daniel C. Roper, First Assistant Postmaster General of the United States. Filed February 18th, 1916. File No. 25,140.